Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of	)	
	)	
Truth-in-Billing	)	CC Docket No. 98-170
	)	
and	)	
	)	
Billing Format	)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF NEVADACOM, INC.

Nevadacom, Inc. ("Nevadacom") hereby comments on the Federal Communications Commission's ("FCC" or "Commission") proposals in the above-captioned proceeding to make telephone bills more accurate and understandable.[1/] If adopted as modified below, these proposals will clarify the responsibilities of service providers to end users, thereby reducing consumer fraud and deception resulting from telephone-billed purchases, often called "cramming." Nevadacom recommends that the Commission in this proceeding also examine the relationship between local exchange carriers ("LECs") and service providers or the billing clearinghouses that act on the behalf of such service providers.[2/] Specifically, Nevadacom proposes that if a LEC chooses to terminate, impose conditions on, or refuse to enter into a billing and collection ("B&C") agreement with a service provider or clearinghouse based on cramming concerns, such action should not adversely affect those service providers not responsible for the cramming complaints.

1/ Truth-in-Billing and Billing Format, Notice of Proposed Rulemaking, CC Docket No. 98-170 (rel. September 17, 1998) ("NPRM").

2/ Throughout these comments, a "service provider" refers to an entity providing a service, such as telegram service, and which bills for such service on a LEC-provided phone bill. Many service providers, such as information service providers, are not common carriers regulated under Title II. Providers of telegram services, however, are regulated under Title II.

LEC billing is crucial to the survival of service providers such as Nevadacom which do not have a cost-effective alternative to LEC billing. Although never the source of a cramming complaint, Nevadacom has struggled to maintain LEC B&C arrangements through its clearinghouses as a result of the unpredictable and unilateral action of the LECs who impose unreasonable conditions in or even terminate B&C agreements without regard for the impact of such actions. The continued uncertainty surrounding LEC B&C arrangements threatens the viability of small carriers such as Nevadacom and the valuable services they provide to the public.

Background

Nevadacom provides domestic and international telegram and cablegram services to customers worldwide. Nevadacom's approximately 500 agents and several thousand couriers provide service to every United States and Canadian address. Nevadacom often transmits messages to rural areas and regions affected by natural disasters and emergencies where no other means of communication is available.

Nevadacom provides its services pursuant to FCC authorization and duly filed tariffs.[3] As a result, Nevadacom is subject to common carrier regulation pursuant to Title II of the Communications Act of 1934, as amended. Among other obligations as a common carrier, Nevadacom must provide service to all who request it, may not discriminate, and is subject to Section 208 complaint proceedings.

To send a telegram via Nevadacom, customers dial an 800 number to reach a representative who will transcribe the customer's message and have it delivered to the intended recipient via fax, hand delivery, phone, or mail. The charge for the telegram is based on the

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[3] Order and Authorization, File No. ITC-95-620 (rel. January 15, 1996); *see also* Nevadacom's FCC Tariff No. 1.

number of words and the method of delivery.

More than half of Nevadacom's customers choose to bill the cost of service to their local phone bill. Nevadacom can provide this type of billing through its contracts with billing clearinghouses which have B&C agreements with the LECs. Telephone billing is particularly important considering that many of Nevadacom's customers have phones but not credit cards, thereby making credit card billing impossible. Besides from some credit card billing, Nevadacom may also bill through debits to bank accounts and, in some cases, through cash payments to agents. Notwithstanding, LEC billing remains the most cost-effective means for billing what are generally one or two transactions per year by a customer.[4]

Within the last two years, LECs began terminating or modifying their B&C agreements with billing clearinghouses. In some cases, the LEC will simply refuse to bill for a particular service or type of call record even if the LEC has not received a complaint regarding a particular service provider. Further, as they are pressured by the LECs, billing clearinghouses have begun to impose dollar limits on the amount a vendor can charge on a phone bill. These practices threaten the continued viability of Nevadacom and similar service providers who rely on LEC billing.

A recent example illustrates one LEC's unreasonableness. Nevadacom contracted with a billing clearinghouse to handle its billing in the US West region. US West terminated its Special Services and Products ("SS&P") Addendum to its B&C agreement with the clearinghouse.[5] With

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[4] Nevadacom tested direct billing in the part and found that less than 37% of customers paid their bills, while more than 90 percent will pay for the same services when billed by the LEC. This disparity is heightened by the fact that charges for Nevadacom's services, generally $40-$60, are not worth pursuing in a collection proceeding.

[5] *See* Letter from Glenn Richards, Counsel for Nevadacom, to Norman Curtwright, Senior Attorney, US West (March 19, 1998) (attached as Exhibit 1); Letter from Norman Curtwright, Senior Attorney, US West, to Glenn Richards, Counsel for Nevadacom (April (continued...)

no input from Nevadacom or its clearinghouse, US West unilaterally decided to classify telegrams as "specialized services." Accordingly, the clearinghouse was unable to continue billing for Nevadacom's telegram services. Despite the fact that Nevadacom was not responsible for any complaints, it was forced to seek another vendor for billing in the US West region and suffered a significant loss in business. In looking for another billing clearinghouse, Nevadacom discovered that LECs have begun to pressure clearinghouses to impose dollar limits on the amount service providers can charge per transaction or per account. Because the cost of an individual telegram can often exceed $50, such restrictions severely limit the services Nevadacom may offer its customers.

I. NEVADACOM SUPPORTS THE COMMISSION'S EFFORT TO ELIMINATE CUSTOMER CONFUSION REGARDING TELEPHONE BILLS.

In the NPRM, the Commission has presented a number of proposals to eliminate customer confusion surrounding telephone bills. Nevadacom agrees with the FCC's conclusion that cramming is a serious concern and that those seeking to cram consumers often do so by relying on confusing telephone bills to mislead consumers.[6/] Nevadacom has never been the subject of a cramming complaint and welcomes the Commission's effort to make telephone bills more accurate and less confusing to eliminate cramming.

Nevadacom supports the FCC's proposal to clearly differentiate between deniable and nondeniable charges on a telephone bill.[7/] Nevadacom agrees that such a distinction will reduce the tendency of consumers to pay unauthorized charges merely out of fear that their local service

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5/ (...continued)
6, 1998) (attached as Exhibit 2).

6/ NPRM at ¶ 3.

7/ NPRM at ¶ 24.

will be discontinued should they fail to pay.

The FCC should reaffirm that it and state commissions, and not the LECs, have authority to determine which charges are deniable. The FCC in its pay-per-call rules has determined that local or long distance service cannot be disconnected for failure to pay charges for information services.[8/] Also, as the FCC has stated, "We believe that state commissions should determine whether LECs will be permitted to discontinue local services for nonpayment of interstate toll services that are not offered by the LEC."[9/]

Like interstate toll services, telegram services are common carrier services regulated under Title II of the Communications Act. LECs, however, often treat telegram services as information services, thereby classifying them as nondeniable pursuant to the FCC's pay-per-call rules. US West, for example, has classified telegram services as nondeniable and "specialized," thereby subjecting such services to different treatment than Message Toll Service ("MTS") charges.[10/] Nevadacom requests that the FCC clarify that telegram services are common carrier services regulated under Title II and should not be treated differently than interstate toll services for purposes of their classification as deniable.

8/ 47 C.F.R. § 64.1510.

9/ Detariffing of Billing and Collection Services, Report and Order, 102 FCC 2d 1150, ¶ 51 (Jan. 29, 1986) ("Detariffing Order").

10/ *See* Exhibits 1 and 2.

II. THE EFFORTS OF THE FCC AND THE FTC WILL ELIMINATE CRAMMING CONCERNS AS A JUSTIFICATION FOR THE LECS' TERMINATION OR MODIFICATION OF B&C AGREEMENTS.

1. LEC-Provided Billing and Collection Is Essential to the Continued Viability of Carriers Such as Nevadacom.

Without LEC-provided billing and collection, Nevadacom's ability to offer its services to the public is in jeopardy. Feasible and cost-effective alternatives to LEC billing do not exist in the present marketplace. For a small carrier such as Nevadacom, direct billing is simply not an option. Among other costs, direct billing requires producing billing statements and inserts and mailing bills. A small carrier simply does not have the resources to perform such functions on a cost-effective basis, particularly when a customer uses Nevadacom's services but once or twice per year. Further, Nevadacom's past attempts at direct billing have demonstrated that customers are less likely to pay a bill when that bill is received from Nevadacom than when a bill is received from a LEC.

Nevadacom's efforts to establish direct relationships with the LECs for billing have also proven infeasible. LECs impose exorbitant set-up fees and high monthly minimum charges which make direct relationships with the LECs impossible for small carriers. For these reasons, LEC-provided billing and collection through clearinghouses is essential to small carriers such as Nevadacom.

2. The FCC and FTC Rulemakings Will Alleviate the LECs' Concerns Regarding Cramming.

LECs have attempted to justify their termination or modification of B&C agreements based on an increase in the number of cramming complaints. The disclosure and dispute resolution provisions provided for in the FCC's and FTC's proposed rules,[11] however, should significantly reduce incidences of cramming.

The Commission's proposal to organize bills by provider will help to eliminate customer confusion that the LEC is somehow responsible for additional charges.[12] When charges for different providers' services are visually separated on a phone bill, customers will be able to separate a service provider's charges with the charges imposed by the LEC. Further, providing the name, address, and a toll-free number of each service provider responsible for a charge will eliminate consumer inquiries and complaints directed towards LECs for non-LEC charges.[13]

III. THE FCC SHOULD FORBID LECS FROM TERMINATING OR IMPOSING UNREASONABLE CONDITIONS ON B&C AGREEMENTS BASED ON CRAMMING CONCERNS AGAINST INDIVIDUAL SERVICE PROVIDERS.

1. Service Providers Not Responsible for Cramming Complaints Should Not Be Affected By a LEC's Decision to Terminate or Modify a B&C Agreement.

Nevadacom recognizes that cramming is a serious concern. The LEC approach to combating cramming, however, has not served the public interest. As indicated above, LEC termination of or imposition of unreasonable conditions in B&C agreements, such as dollar limits per telephone bill, will harm many valuable service providers.

Consequently, Nevadacom requests within this proceeding that the FCC forbid LECs from unilaterally terminating or imposing unreasonable conditions in B&C agreements, including discriminatory treatment of "specialized" service providers. Nevadacom agrees that LECs should

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[11] The FTC has proposed to modify its pay-per-call rules to combat cramming. *See* 16 C.F.R. part 308; *see also* Pay-Per-Call Rule, Notice of Proposed Rulemaking (available at http://www.ftc.gov/opa/1998/9810/ninerule.htm).

[12] NPRM at ¶ 17.

[13] NPRM at ¶ 34.

be able to discontinue billing for individual service providers that have been the cause of an excessive number of cramming complaints. However, the FCC should forbid LECs from terminating or imposing unreasonable conditions in B&C agreements when such action adversely affects service providers that have not been the cause of cramming complaints.

Particularly egregious is the LECs' practice of combining all of the cramming complaints generated by various service providers and then using this number to justify terminating a B&C agreement with a clearinghouse. When a LEC terminates one B&C agreement with a clearinghouse based on excessive cramming complaints, both innocent and guilty service providers are punished alike.

2. The FCC Has Ancillary Jurisdiction Under Title I to Regulate LEC Billing.

In 1986, the Commission detariffed billing and collection services, determining that such services were not common carrier services subject to Title II regulation.[14] The Commission did find, however, that billing and collection is "incidental" to the transmission of wire communications and, therefore, is a communications service within the meaning of Section 3(a) of the Communications Act.[15] Accordingly, the Commission can invoke ancillary jurisdiction under Title I of the Communications Act over LEC billing and collection.[16] The Commission has held that "Title I permits us to exercise ancillary jurisdiction over communications services if such

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[14] Detariffing of Billing and Collection Services, Report and Order, 102 FCC 2d 1150 (Jan. 29, 1986) ("Detariffing Order").

[15] *Id.* ¶ 36; Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, *Report and Order and Request for Supplemental Comment*, 7 FCC Rcd 3528, n.50 (May 8, 1992).

[16] Detariffing Order, ¶ 35.

regulation is 'necessary to ensure the achievement of [our] . . . statutory responsibilities.'"[17]

The Commission should exercise its Title I jurisdiction and prevent LECs from terminating or modifying B&C agreements in any manner that will adversely affect service providers that have not been the cause of cramming complaints. This exercise of Title I jurisdiction is necessary to achieve the Commission's statutory responsibilities to preserve and advance universal service and to promote "safety of life and property through the use of wire and radio communication."[18]

As discussed above, the current LEC practice of terminating or imposing unreasonable conditions on B&C agreements due to cramming complaints will hurt many small service providers who rely on LEC billing, such as Nevadacom. Telegrams provide one of the only means of communication for Americans in emergency situations.[19] Telegrams are also one of the only means of communication with Americans who do not own phones or for communications abroad. The LECs' current practice of classifying telegrams as "specialized" and then terminating B&C agreements for such "specialized" services threatens the continued viability of the telegram industry. Without telegrams, the United States will lose an essential means of communication, thereby thwarting the Commission's statutory responsibility to promote and advance universal service.

17/ Audio Communications, Inc., *Memorandum Opinion and Order*, 8 FCC Rcd 8697, ¶ 23 (Dec. 20, 1993) (citations omitted).

18/ 47 U.S.C.§§ 151, 254.

19/ The Commission and the International Telecommunications Union have recognized that telegrams are a means of communications in emergency situations. Domestic Public Message Services, *Memorandum Opinion and Order*, 71 FCC 2d 471 (March 28, 1979).

Conclusion

In light of the foregoing, Nevadacom requests that the Commission take action consistent with the recommendations discussed herein.

Respectfully submitted,

NEVADACOM, INC.

Glenn S. Richards
David S. Konczal
FISHER WAYLAND COOPER LEADER
AND ZARAGOZA L.L.P.
2001 Pennsylvania Avenue, NW
Suite 400
Washington, DC 20006
(202) 659-3494 (phone)
(202) 296-6518 (fax)

Dated: November 13, 1998

Exhibit 1

FISHER WAYLAND COOPER LEADER & ZARAGOZA L.L.P.
2001 PENNSYLVANIA AVENUE, N.W.
SUITE 400
WASHINGTON, D. C. 20006-1851
TELEPHONE (202) 659-3494
FACSIMILE (202) 296-6518
WEBSITE http://www.fwclz.com

March 19, 1998

Via Federal Express and
Facsimile (303) 295-6977

Mr. Norm Curtwright
US West Communications. Inc
Suite 5100
1801 California St.
Denver. CO 80202

Dear Mr. Curtwright:

On behalf of our client, Nevadacom, we hereby request that US West immediately resume billing and collection of Nevadacom's telegram records through it billing clearinghouse, Integretel.

Nevadacom is a federally tariffed provider of telegram services and has received authority from the Federal Communications Commission ("FCC") under Section 214 of the Communications Act of 1934 to provide international common carrier services (FCC File No. ITC-95-620). Since 1992. US West has been billing and collecting Nevadacom's telegram billing records through Integretel. Initially, we understand that billing and collection was through a single contract between US West and Integretel. Subsequently, US West required Integretel to bill telegram pursuant to its specialized services and products ("SSP") agreement. Recently, however, we understand that US West terminated Integretel's SSP agreement based on high chargebacks for certain market segments billed under the SSP agreement. We understand that Nevadacom's telegram services were not a contributing factor to the chargeback problem. Nevertheless, this unforeseen and inexplicable action has resulted in substantial disruption in our client's business dealings.

As we understand the situation, despite seven years of billing Nevadacom's telegram records through Integretel. US West has decided to terminate such billing. Apparently, high inquiry rates associated with non-telegram records have prompted this action. Nevadacom, however, has not been the source of these inquiries. We request that Integretel be permitted to bill Nevadacom's telegram services with other Message Toll Service ("MTS") charges by, if necessary, a simple amendment of US West's MTS agreement with Integretel. Nevadacom's services are regulated common carrier services and. therefore. are deniable telecommunications charges. Because Nevadacom's services are deniable, they are eligible for billing under Integretel's MTS agreement. The regional Bell Operating Companies and GTE have all accepted the position that telegrams are deniable telecommunications charges. Indeed, we understand that US West continues to bill for 900 services, which are nondeniable under Integretel's MTS agreement.

Moreover, we bring to your attention that we understand that US West provides billing and collection services to Nevadacom's competitor, Western Union, which also provides telegram services. It is unclear to us why Western Union's telegram records are billed in a different manner by US West than those of Nevadacom. Such blatant discrimination among similarly situated carriers is a violation of Section 202 of the Communications Act of 1934. We are unaware of any statutory or regulatory basis for US West's discrimination against Nevadacom in this fashion.

In light of the foregoing, Nevadacom requests that US West immediately resume billing and collecting for Nevadacom's telegram records through its billing clearinghouse, Integretel.

Sincerely,

Glenn S. Richards
Counsel for Nevadacom

cc: Roger J. Meyers, COO, Nevadacom
Linda Benito, VP, Integretel

Exhibit 2

U S WEST, Inc.
1801 California Street. Suite 5100
Denver, Colorado 80202
(303) 672-2817
Facsimile 303 295-6977
E-Mail ncurtri@uswest.com

USWEST

Norman G. Curtright
Senior Attorney

April 6, 1998

Glenn S. Richards
Fisher Wayland Cooper Leader & Zaragoza L.L.P.
2001 Pennsylvania Avenue. N.W.
Suite 400
Washington. D.C. 20006-1851

Dear Mr. Richards:

This is written in reply to your letter of March 19, 1998, in which you request that U S WEST Communications resume billing and collecting for Nevadacom's telegram records through its billing clearinghouse, Integretel.

It is apparent from your letter that Integretel has informed you that U S WEST has terminated the SS&P Addendum to the U S WEST / Integretel Agreement. Since U S WEST is in privity of contract with Integretel, not Nevadacom, U S WEST is limited in its ability to deal directly with Nevadacom through the Integretel agreement.

I am able to respond to some of the assertions in your letter, however, as they relate to misunderstandings of U S WEST's policies. While your client's telegram service may be tariffed by the FCC. U S WEST does not agree that telegram services are "deniable." U S WEST does not bill telegram service with other Message Toll Service charges, and believes it would be inappropriate to do so. U S WEST's takes the position that telegram services are "Specialized Services" and should be billed as such. U S WEST thinks it is appropriate to protect telephone consumers from possible disconnection of local or long distance telephone services for non-payment of telegram and other "Specialized Services and Products."

It is also necessary to correct your statement that 900 services are billed under Integretel's MTS agreement. As is the case with all billing customers, U S WEST bills for 900 information services separately from MTS charges, under a special contract addendum.

You state that U S WEST currently provides billing services for your client's competitor, Western Union. U S WEST does not have a contract with Western Union. If Western Union telegram services (or any other companies' telegram services) are being billed as

MTS charges, it would be in violation of U S WEST's contract with the clearinghouse. These telegram services would be billed in the same manner as your client's services were billed by Integretel, as Specialized Services, which are considered non-deniable.

U S WEST regrets that Nevadacom has been inconvenienced by the termination of the Specialized Services Addendum with Integretel. As you can see, however, U S WEST has not discriminated among similarly situated carriers with respect to its billing services, which billing services, in any event, are not regulated telecommunications services. Nevadacom may wish to explore using other clearinghouses which have agreements that are intact.

Sincerely,

Norman G. Curtright

cc: Cynthia Humphrey
Pamela Jenkins
Mary Halula